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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,410	04/19/2004	Timothy J. Donohue	DONTIM P01AUS	2586

20210 7590 05/03/2005  
DAVIS & BUJOLD, P.L.L.C.  
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MANCHESTER, NH 03101-1151

EXAMINER
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PATEL, NIHIR B

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

6

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/827,410	DONOHUE, TIMOTHY J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Nihir Patel	3743	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02.14.2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4 is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Allowable Subject Matter***

Claim 4 is allowed.

### ***Response to Arguments***

Applicant's arguments filed on February 23<sup>rd</sup>, 2005 have been fully considered but they are not persuasive. The applicant argues that the inhaler of the present invention is comprised of a single generally cup shaped body that forms both an portion mating to the face of a patient, somewhat in the manner of a face mask, and the ice and air chambers for cooling the air provided to the patient whereas the air conditioned face mask of Gleockler is comprised of at least three separate parts. It has been held "that the use of a one piece construction instead of the structure disclosed in Gleockler '590 would be merely a matter of obvious engineering choice." In re Larson, 340 F.2d 965, 144 USPQ 347, 349 (CCPA 1965).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Gleockler.

**Referring to claims 1 and 5**, Gleockler discloses an air conditioner for a face mask that comprises a body having at least one side wall and a bottom wall forming an enclosed space open at an upper portion of the body (**see figure 1**), the upper portion of the body being adapted

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to generally conform to contours of a lower part of the patient face (**see figure 1**), wherein the cup shaped body includes an air chamber formed in an upper part of the body and having an exhaust vent for exhausting the patient's exhaled air to an exterior space (**see figure 1**), an ice reservoir formed in a lower part of the body to contain ice and melt-water from the ice (**see figure 1**), and an air passage connected from the exterior space and passing through the ice reservoir to conduct air to the air chamber (**see figure 1**), wherein intake air is drawn from the exterior space and through the air passage into the chamber when the patient inhales air from the chamber such that the intake air in the air chamber is cooled and moisturized air from by the ice in the ice reservoir, so that the patient inhales cool, moisturized air from the air chamber (**see figure 1**), and exhaust air exhaled by the patient is vented from the air chamber through the exhaust vent (**see figure 1**).

**Referring to claim 2**, Gleockler discloses an apparatus wherein the air passage further comprises a one-way intake valve formed of a self-hinged membrane of resilient material (**see column 1 lines 60-67**).

**Referring to claim 3**, Gleockler discloses an apparatus wherein the exhaust valve comprises a self-hinged membrane of resilient material (**see column 1 lines 6-67**).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272 4791.

NP  
April 26<sup>th</sup>, 2005



Henry Bennett  
Supervisory Patent Examiner  
Group 3700